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10/562,433

12/28/2005

Gerard Valat

0584-1037

3856

466 7590 12/10/2009
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EXAMINER

PRANGE, SHARON M

ART UNIT

PAPER NUMBER

3728

NOTIFICATION DATE

DELIVERY MODE

12/10/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/562,433 | Applicant(s) VALAT ET AL. | |
| | Examiner SHARON M. PRANGE | Art Unit 3728 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to Applicant's amendment in which claims 1 and 3-7 have been amended, claim 2 has been canceled, and claim 8 has been added. The previous 35 USC 112 rejection from the previous rejection is withdrawn in light of Applicant's amendments to the claims.

Claim Objections

1. Claim 3 is objected to because of the following informalities: Claim 3 is dependent on claim 2, which is canceled. For purposes of examination claim 3 is treated as being dependent on claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "at a respective first end" in lines 54-55. However, "a first end" of the flexible plates is previously recited in line 36. It is not clear whether the first end of line 55 is the same as or different than the first end of line 36. For purpose of examination the first end of line 55 is treated as the same as the first end of line 36.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nerrinck et al. (US 5,224,281), herein Nerrinck.

Nerrinck discloses a first rigid shell (shell base 1) which defines a body intended to receive the foot of a user, and a second rigid shell (rear portion 5) which defines an upper intended to receive the leg of a user. The body has a housing (between abutments 71, 72) on a lateral side. An articulation (journal axis 7) connects the body and upper, allowing the upper to rotate relative to the body (column 3, lines 29-49; Fig. 1). A first stop limiter has a first flexion element (stop element 14) which comes into contact with a second flexion element (linkage axis 8) to limit rotation in a flexion rotation direction (column 4, lines 15-24; Fig. 2a). A second stop limiter has a first extension element (support element 13) which comes into contact with a second extension element (back of stirrup 9) to limit rotation in a second direction (column 3, lines 54-56; Fig. 1, 2a). A one-piece damping means/element (stirrup 9) has a thin flexible plate (flexible extension 70') which has an inactive state during normal rotation (before extension comes into contact with abutments 71, 72), and an active state when the upper and body rotate near the maximum rotation range. The second end of the damping means comes into abutment with the housing of the boot to produce a force opposing moving together of the flexion elements (when extension 70' hits abutment

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72), and to produce a force opposing moving together of the extension elements (when extension 70' hits the abutment 71) (column 7, lines 39-45; Fig. 16). The plate (bar 502) has a curved portion which extends around the articulation.

Regarding claim 5, the plate is present on both sides of the body, constituting two plates. The two plates are connected to each other at a first end (column 3, lines 42-46).

Regarding claims 1, 5, and 6, Nerrinck discloses the general conditions of the claimed invention except for the express disclosure of the rotation ranges. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the maximum rotation range between 50 and 70 degrees, the normal rotation range between 30 and 50 degrees, and the damped rotation range between 5 and 20 degrees, since the claimed values are merely an optimum or workable range. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

6. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARON M. PRANGE whose telephone number is (571)270-5280. The examiner can normally be reached on M-F 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. P./ 12/4/09
Examiner, Art Unit 3728

/Mickey Yu/
Supervisory Patent Examiner, Art
Unit 3728